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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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India: Absence of police reforms threatens national security

1. Of all what transcribed, aired live by the Indian visual media, the 2008 terrorist attack on Mumbai was also the revealing moment of how India's security apparatus was thoroughly unprepared to deal with an emergency, like a coordinated attack upon the country's financial hub and the people who call the city home. By the time the Government of Maharashtra, along with the union government and its security forces counteracted, lives were lost, of innocent civilians as well as that of the uniformed forces; business establishments were destroyed taking along with it public confidence that shattered to an all-time low, realising that the country's administration is incapable of securing safety to its people.

2. Public confidence is the foundation stone based on which security agencies in a democratic society operate to safeguard the property and life of its citizens. The public perception of the security apparatus, most importantly about the local police in India is very poor, that the ordinary Indian considers the local police as criminals in uniform. This opinion is based on 64 years of interaction of the police with the people. To the people of India, their police is an institution that they would not want, if possible, not to relate with. Officers in uniform depict the picture of a rouge state institution, payed from the exchequer that extracts bribes from the beggar on the street to the business tycoon in the air-conditioned office.

3. Crime investigation, even as of today, begins and ends with confession statements extracted through brute forms of torture. Police officers of all ranks demand and accept bribe, and officers are state agents that the ordinary Indian would not trust to share information. Indian police is notorious for torturing and threatening informants, that today fearing that an informant would be unsafe at the hands of the police, people do not approach the police with complaints or other sensitive information. Police stations, in appearance and function represent medieval dungeons, where safety is the first casualty.

4. Only a negligible number of police officers in India know to undertake crime investigation using scientific methods and for these officers, there are hardly any tools to undertake such investigations. Arresting a suspect and torturing the person in some of the most heinous means to extract confession and information is what criminal investigation is. So much so, policy makers, police officers and the general public believes that the moment a crime is reported if the suspect is not arrested immediately, there is no progress to investigation. Unlike in other advanced jurisdictions where arrest of a suspect is made only after a reasonable amount of investigation points to the individual who might have committed the crime under investigation, in India, when a crime is reported the first thing the investigator is expected to achieve is the arrest of the suspect.

5. Enormous delays in prosecution and the requirement of the witness to attend court hearings for decades without end, discourages people to voluntarily commit as witnesses to crimes if they had witnessed the commission of a crime. The police overcome this by arranging stock witnesses, often local criminals, who are cited as witnesses in prosecutions that often fail the test of cross-examination in courts. When the prosecution of a crime is based solely upon the confession statement of an accused and witnesses in cases fabricated by the investigator, the criminal trials ends up in acquittals. This is why, India has one of the lowest conviction rates in the civilised world.

6. Unfortunately instead of addressing the root problem, the inability of the investigator to investigate a crime using modern facilities and technologies, India's criminal justice reforms policies are in the wrong direction of fastening binding nature to witness statements to the police. Government of India has tried repeatedly without success to take away the caveat provided in Section 164 of the Criminal Procedure Code, 1974 that the statement to a police officer investigating a crime by a witness should be proven in a court of law. The government was unsuccessful so far in these attempts due to civil society protest. However, there are no guarantees that yet another attempt to amend the law would be defeated by civil society pressure.

7. Long delays in prosecution, often running into decades, places India in that category of countries that holds a substantially large number of under trial prisoners. Of persons held in custody, convicted or otherwise, the national average is that 64.7% are under trials. In some states like Bihar, Andhra Pradesh and Meghalaya, this percentage of under trials exceed 80% of the total number of persons held in custody in state facilities. It is this situation that prompted the Supreme Court of India to remark, "... the laxity with which we throw citizens into prison reflects our lack of appreciation for the tribulation of incarceration; the callousness with which we leave them there reflects our lack

of deference for humanity."

8. A substantial number of these individuals are poor, many illiterate, and unable to afford for a privately paid legal defence. When their cases come finally for a trial, they might have stayed in under trial detention much more than the maximum number of years they could be convicted for the offense alleged against them. A shortcut the trial courts then adopt is to encourage the suspect to plead guilty, and to setoff the under trial detention in lieu of the sentence and release the person from custody. While this one hand renders a gross miscarriage of justice, on the other, artificially increases the national average in conviction rates. This explains why there is a substantial spike in the conviction rate in India from a meagre 4% (1998) to 32% (2013). Analysed from the background facts, that this spike is achieved without having any revolutionary changes brought into the capacity of trial courts in India to clear the backlogs of cases as well as no reforms implemented to improve the capacity of the local police to investigate crimes, it exposes the monstrosity of the problem as well as the manipulation of crime statistics in India by the government, for which the country's judiciary has played a condemnable role.

9. India shares large extent of international land-based boundaries with its immediate neighbours. Countries like Pakistan, Nepal and Bangladesh, due to their weak criminal justice institutions are also breeding and training grounds to criminal syndicates that operates regionally. The Indian Border Security Force (BSF) is a corrupt establishment that follows the least, any form of operational legal mandates.

10. The Asian Legal Resource Centre (ALRC) along with its sister concern, the Asian Human Rights Commission (AHRC) has documented enough number of cases to substantiate that the officers of the BSF are engaged in cross-border smuggling, including human and weapons trafficking. Due to this a substantial portion of the country's border remain porous that allows members of the criminal syndicates to run weapons, humans, drugs and other contrabands across international borders. The situation is grave along the Indo-Bangladesh border, where the ALRC and the AHRC has documented more than 300 cases of crimes committed by the BSF.

11. The response so far by the Government of India to enhance national security is to create a National Security Agency, empowered to supersede local police as well as stationing rapid action teams close to large cities. While these are responses that could address security concerns in the country partially, the essential problem is still left unaddressed, that is to refine the country's local policing to fit to serve a fast advancing democracy.

12. Despite attempts, also by honest police officers to save the institution from political clout, corruption and ineptitude, even by invoking the extraordinary jurisdiction of the Supreme Court of India, Indian police remains the leftover of a colonial construct that attempts to maintain order by generating fear using brute force. This is one of the fundamental reasons why India shy away from having two essential reforms, one at the legislative level to enact a strong anti-torture law, and the other at the administrative level to constitute in every state an independent body, that can accept, investigate and take actions upon complaints against police.

13. The Police Complaints Authority (PCA) constituted at the district and state levels, post the Prakash Singh case, is a far cry of what an independent police complaints' adjudication body should be. These entities are manned by serving police officers and retired lower court judges, who consider appointment to the PCA a post retirement employment opportunity. This is the reason why, so far no critical actions have ever reported to have been taken by the PCAs across the country, against police officers.

14. Henceforth for the foregoing reasons, the Asian Legal Resource Centre (ALRC) requests the Council to:

a. Urge India to take immediate steps to enact a strong anti-torture legislation;
b. Recommend that India spend adequate resources to refine its policing system, most importantly providing adequate resources and training for the police to undertake criminal investigations through scientific means than resorting to the current practice of brute torture, and;
c. Recommend that India undertakes a substantial review of its criminal justice framework that adequate and immediate changes are made to, most importantly its investigative framework, that it meets the requirements of fast advancing democracy.